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# THE ATTITUDE OF THADDEUS STEVENS TOWARD THE CONDUCT OF THE CIVIL WAR

BY

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## THE ATTITUDE OF THADDEUS STEVENS TOWARD THE CONDUCT OF THE CIVIL WAR

FROM July, 1861, to his death in 1869 Thaddeus Stevens was the leader of the Republican majority of the House of Representatives. He was chairman of the Ways and Means Committee of the House throughout the war, and his attention was therefore largely devoted to questions of taxation and finance, of revenues and appropriations. These subjects in time of war offer a large field of study in connection with Stevens. But the purpose of this paper is not to consider Stevens's contributions and services on these lines, but rather to bring into review his career and opinions in relation particularly to the more distinctly constitutional, political, and party issues which the war presented.

There are three salient aspects about which the political movements and controversies of the Civil War may best be organized and studied: first, the relation of the war to slavery; second, the relation of the war to the Constitution; third, the effect of the war upon the political status of the seceded states and their relation to the Federal Union. These, together with the increased war powers of the President, present the essential issues and phases of the struggle in which the student of war politics will be most concerned. I shall attempt to summarize or bring into brief review Stevens's record upon these salient features of the war.

Stevens recognized as clearly as any man then in public life the seriousness of the great conflict in which the country was engaged, and in the councils of the nation he constantly insisted upon promptness, energy, and determination of purpose. To him it was perfectly clear that the slaveholders were trying to destroy the Union to save slavery; he would, therefore, destroy slavery to save the Union. The Southern states had violated the Constitution to gain their independence; Stevens would give them none of the benefits of the Constitution in the war that it was found necessary to wage upon them. These states had of their own free will repudiated the Constitution and withdrawn from the Union. He would no longer recognize them as sister states under the aegis of law, but having subdued them as a belligerent enemy he would hold and govern them as conquered provinces. These principles of action he laid down in the

beginning, and in the pursuance of them he was clear, consistent, and undeviating from first to last. Firm of purpose and clear of vision, he had no manner of doubt as to the course the nation should pursue in the varying phases of the struggle for the Union. No one need to have been left in doubt as to his policies and plans, for among the membership of the national House he stood pre-eminent as a man with the qualities that a public man most needs in such a time—dauntless courage, a conscience of his own, opinions of his own, and a will of his own. He encountered no superior in intellectual combat, and in the fight he was appointed to endure he well fulfilled the canons of the strenuous game—he never flinched, he fouled no man, and he hit the line hard. An unconquerable fighter, he seemed made for a time of war, a time of storm and stress, and, his enemies themselves being the judges, he stood foursquare to all the winds of opposition that came. These characteristics, together with the times in which he lived and the problems which he faced, make Stevens one of the most memorable figures in our Congressional annals. I proceed to notice his war career with reference to the three aspects of the war to which I have referred—slavery, the Constitution, and the status of the states.

The evidence is conclusive that it was not the original purpose of the nation in the Civil War to interfere with slavery. If it had been but a hundred days' war, it would probably have ended with slavery intact. Hostile intention against slavery was specifically disclaimed. Mr. Lincoln disclaimed it on behalf of the executive, and the two houses of Congress disclaimed it on behalf of the legislative branch of the government.

At the beginning of the war, two days after the battle of Bull Run, Congress passed almost unanimously, in both Houses, the famous Crittenden resolutions setting forth the objects of the war. These resolutions recited, in substance, that the war was not prosecuted for the purpose of subjugating the Southern states—that is, of overthrowing their state governments and reducing them to provinces; nor for the purpose of interfering with slavery in the states, but to defend and maintain the Constitution and the laws, and to preserve the Union with all the equality and rights of the several states unimpaired. The war should accomplish these ends and no more. This resolution voiced at the time the public opinion of the country, and almost the unanimous opinion of the Republican party. President Lincoln represented this opinion, and in a conservative spirit he attempted at first to conduct the war without interfering with slavery, on the assumption that the status of the states and their relation to the Union had not changed.

But the war made all the difference in the world. The events of but a few short months of war wrought a decided change in the purpose and temper of Congress and the country. It was seen that slavery was a source of strength to the Rebellion. Conservative Union men were being rapidly and radically convinced that if the national government did not interfere with slavery, slavery would seriously interfere with the national government and the success of its arms. This change in policy and purpose is indicated by the fact that when the Thirty-seventh Congress came together again in its regular session in December, 1861, and an attempt was made to reaffirm the Crittenden resolution which had received such universal approval but a few months before, it was decisively rejected. It was rejected by a party vote upon the motion of Stevens, who had thus considerable satisfaction in seeing that at least his own party had now come to his position in asserting its freedom from a doctrinaire impediment to the conduct of the war, and that the nation was now to feel free to strike at slavery or to do whatever else would seem best calculated to promote the success of the national cause.

The events of the war had, however, made no change in the purposes and opinions of Stevens. His principles were settled, his mind was fixed from the beginning. When the Crittenden resolution had been offered in July, he objected to it and withheld his vote. He was one of four in the House who were not ready to subscribe to its doctrine. He was one of the more pronounced and radical—may we not say more far-seeing?—antislavery men who believed that the Rebellion must result in the destruction of slavery. He would not embarrass the government nor prevent its dealing a blow in opposition to slavery when occasion should arise. He wanted the government to have a free hand, an unrestricted liberty, in the conduct of the war, and he did not wish Congress to commit itself to a doctrine from which it would subsequently have to recede. He believed in the beginning what Lincoln came to believe in the midst of the war, that, in this national crisis, Congress and the President, representing the sovereign nation, had the right to take "any step which might best subdue the enemy."<sup>1</sup> He wanted the rulers of the nation to indulge no scruples nor lay down any generalities that would interfere with the most vigorous prosecution of the war.

Time clearly vindicated Stevens's leadership in this respect. A fortnight had not gone by after the passage of the Crittenden resolution defining the objects of the war and giving an implied promise that slavery would not be interfered with, before slavery had become a subject of sore discussion in Congress. It came up in connection

<sup>1</sup> *Life and Writings of B. R. Curtis*, I. 348.

with the first Confiscation Act, August 3, 1861. To this measure Stevens gave his earnest support. This was the beginning of war legislation concerning slavery. It aroused opposition, because a section of the law required that owners should forfeit the slaves whom they allowed to be used in arms against the United States or to labor in forts or intrenchments, or whom they should employ in any naval or military capacity against the national government.

In the debate on confiscation, August 2, 1861, Stevens voiced his deep opposition to slavery and his purpose to strike at that institution whenever occasion offered. He said:<sup>1</sup>

God forbid that I should ever agree that the slaves should be returned to their masters and that you should rivet again the chains which you have once broken. I do not say that this war is made for that purpose. Ask those who made the war what its object is. Do not ask us. I did not like the Crittenden resolution because it looked like an apology from us in saying what were the objects of the war. Those who made the war should explain its objects. Our object is to subdue the rebels.

In this discussion Stevens predicted the arming of the blacks and said that he was ready to act for it, "horrifying to gentlemen as it may appear; that is my doctrine and it will be the doctrine of the whole people of the North before two years roll round."

After the rejection of the Crittenden resolution in December, 1861, Stevens wished to bring his party and the administration to higher and more aggressive ground upon slavery and emancipation. He would speak out the whole truth whether the nation would hear or forbear. On December 3, 1861, the first day of the regular session of the Thirty-seventh Congress, Stevens introduced a joint resolution, for enactment into law, containing two propositions: the first was to strike for general emancipation as the best means of crushing the Rebellion; the second, to make full payment for losses to loyal owners by this policy. His resolution asserted that slavery had caused the Rebellion and that there could be no peace and Union while that institution existed; as slaves are used by the rebels for supporting the war, and as by the law of nations it is right to liberate the slaves of an enemy to weaken his power, therefore the President should be directed to declare free and to direct our generals in command to order freedom to all slaves who shall leave their masters or aid in quelling the Rebellion.

His speech of January 22, 1862, on these resolutions shows him

<sup>1</sup> In order to avoid excessive length of quotation, I have throughout this article omitted many sentences from Stevens's speeches without sign of omission and have even in some cases used abridged phrases, without, I trust, ever misrepresenting in any degree his meaning.

to be one of the earliest, boldest, most outspoken, and, I think, most influential of the antislavery advocates who were seeking to direct the war to antislavery ends. Stevens knew that Congress and his party were not yet ready to follow in the line of his proposals, and that the public sentiment of the country did not sustain his radical policy. But he wished to educate that sentiment and to lead his party in the direction which he clearly saw would ultimately be found to be essential. He felt that the national government in the conduct of the war so far had been weak, timid, vacillating, ineffective, without appreciation of the formidable task before it. The country needed a tonic; the administration needed nerve and a stiffened spine. Stevens would infuse more energy into the prosecution of the war, and not be afraid to employ the means at hand. He did not think it a time for honeyed words and conciliation. He was not a representative of peace and good will; he was a representative for war; the business of war was to conquer, and in the war now forced upon the nation he stood for firm, unyielding, uncompromising force. It seems reasonable to say that in energizing the war power of the nation and leading it to lay hold of every possible weapon for overcoming resistance to the national authority there was in the national forum no stronger personal force than Thaddeus Stevens. A review of his speeches will give one a high appreciation of their educational influence in this direction.

He was bitter and unsparing in his denunciation of the Southern leaders for their course, and he sought to arouse the resentment and war spirit of the nation to crush the South. Yet he manifested a better conception of the Southern spirit and character and of the consequent nature of the task before the country than that possessed by his opponents and critics. Dismissing all hope of reunion by voluntary concession from the South, he wished to have it clearly recognized, as it should have been, that from the Southern standpoint the separation was final, and that the Confederate States would consent to reunion only through the exhaustion of war. Stevens saw that the task could be accomplished only by the sacrifice of thousands of lives and millions of money. He recognized that the Southerners were proud, haughty, obstinate, and that their training had led them to believe that they were born to command. They had declared that they would suffer their country to become a smoking ruin before they would submit. Stevens would accept the issue. He said:

It were better to lay waste the whole South than to suffer the nation to be murdered, better to depopulate the country and plant it with a new race of freemen, than to suffer rebellion to triumph. There should

be no negotiation, no parley, no truce until every rebel shall have laid down his arms and submitted to the Government.

He was among the first to see that this would not be done until the South was wholly exhausted:

Let us not be deceived. Those who talk about peace in sixty days are shallow statesmen. The war will not end until the Government shall more fully recognise the magnitude of the crisis; until they have discovered that this is an internecine war in which one party or the other must be reduced to hopeless feebleness and the power of further effort shall be utterly annihilated. It is a sad but true alternative. The South can never be reduced to that condition so long as the war is prosecuted on its present principles. The North with all its millions of people and its countless wealth can never conquer the South until a new mode of warfare is adopted. So long as these states are left the means of cultivating their fields through forced labor, you may expend the blood of thousands and billions of money, year by year, without being any nearer the end, unless you reach it by your own submission and the ruin of the nation. Slavery gives the South a great advantage in time of war. They need not and do not withdraw a single hand from the cultivation of the soil. Every able bodied white man can be spared for the army. The black man, without lifting a weapon is the mainstay of the war.<sup>1</sup>

Stevens would have no regard for the "sympathizer with treason" who would "raise an outcry about a servile insurrection or prate learnedly about the Constitution." He thought a "rebellion of slaves fighting for their freedom was not so abhorrent as a rebellion of freemen fighting to murder the nation." He wished the Northern armies to be "possessed and impelled by the inspiration that comes from the glorious principle of freedom." He thought the North had not shown "the fiery zeal that impelled the South; nothing of that determined and invincible courage that was inspired in the Revolution by the grand idea of liberty, equality and rights of man."

Our statesmen do not seem to know how to touch the hearts of freemen and rouse them to battle. No sound of universal liberty has gone forth from the capital. Our generals have a sword in one hand and shackles in the other. Let it be known that this government is fighting to carry out the great principles of the Declaration of Independence and the blood of every freeman would boil with enthusiasm and his nerves be strengthened for a holy warfare. Give him the sword in one hand and the book of freedom in the other, and he will soon sweep despotism and rebellion from every corner of this continent. The occasion is forced upon us and the invitation presented to strike the chains from four millions of human beings and create them men; to extinguish slavery on this whole continent; to wipe out so far as we are concerned the most hateful and infernal blot that ever disgraced the escutcheon of man; to write a page in the history of the world whose brightness shall eclipse all the records of heroes and sages.<sup>2</sup>

<sup>1</sup> *Congressional Globe*, January 22, 1862.

<sup>2</sup> *Ibid.*

This was effective oratory, the oratory of conviction and action. It was spoken at a time when slavery still seemed rooted and grounded in the policy of the President and of Congress and in the public sentiment of the country. Who will say that the voice of Stevens was not a powerful influence in bringing the country and its rulers to the higher plane of emancipation, to a readiness to direct the war for liberty as well as for union?

As the war continued and the administration still seemed conservative and reluctant to pursue an antislavery policy, Stevens repeatedly expressed his dissatisfaction. Lincoln's message proposing compensated emancipation Stevens characterized as "the most diluted milk and water gruel proposition that was ever given to the American nation." He urged the passage of the Act (March 13, 1862) forbidding the return of fugitive slaves and he favored every act looking toward antislavery ends. He said he could not approve putting generals who sympathized with slavery at the head of our armies with orders to pursue and return fugitive slaves, nor did he like it to have our forces set to guard the property of rebel soldiers. When asked if he intended his charge against the President and the Secretary of War or only against the generals in the field, he said "I intend it shall apply where it belongs."

I am no sycophant, no parasite. What I think I say. These acts have been perpetrated without rebuke. Let the world determine where the responsibility rests. I believe the President is as honest a man as there is in the world; but I believe him to be too easy and amiable, and to be misled by the malign influence of Kentucky counselors—and the Border State men.<sup>1</sup>

He again urged the enlistment of negro troops and advised the administration not to be afraid of the cry of abolitionism, but to follow out the policy of military emancipation suggested by General Hunter's order. He had no hope of success until that policy was adopted. He viewed the matter not only as a question of emancipation or abolition, but as the only means of putting down the Rebellion. For rebuking General Hunter he thought the administration deserved to be driven out, and he denounced it for refusing the liberation and employment of the slaves. He would seize all property of disloyal men as our armies advanced, and he would plant the South with a military colony if the Southerners would not otherwise submit.

We come now to the attitude of Stevens toward the Constitution; the constitutionality of war measures; and the effect of secession and war on the status of the seceded states.

The antislavery policy advocated by Stevens and men like him

<sup>1</sup> *Congressional Globe*, July 5, 1862.

was one of the apologies for party opposition to the war. The anti-slavery men were accused of wishing to make the war entirely subservient to abolition, and of being unwilling to see the Union restored with slavery as it was. They would not be quiet but were obtruding their opinions everywhere, with the result that while in July, 1861, the nation was united, the Union forces were now divided, since those who wished to prosecute the war solely for the purpose of restoring the Union were alienated and estranged.<sup>1</sup> A large body of conservative men in the North, chiefly among those who had opposed the Republican party and Mr. Lincoln's election, looked upon the antislavery programme both as a perversion of the Constitution and as an entire departure from the original and legitimate objects of the war. Under the leadership of adroit and able men, these conservative Democrats and Constitutional Unionists became a compact party of opposition whose opinions and purposes may be summarized as follows:

(1) In the first place they accepted the Crittenden resolution as their war platform, and they would have it clearly recognized that the primary and sole object of the war was to save the Union. It was not to interfere in any way with slavery. Any act or policy tending to turn the military forces of the government from mere union-saving to abolitionism, or toward emancipation as a means of union-saving, was unconstitutional, a perversion of the object of the war, and it ought to be resisted.

(2) In the second place the war must be so conducted and ended as to preserve the equality of the states. The Union was based on this equality and it must be preserved. There must be no conquest or subjugation or interference with statehood or with the rights of the states, their governments, or their domestic laws. Whoever should attempt by Federal authority to destroy any of the states, or to establish territorial governments within them, was guilty of a high crime against the Constitution and the Union. The Union as it was must be restored and maintained under the Constitution as it is; and any person proposing peace on any other basis than the integrity of the states was as guilty a criminal as he who would propose peace on the basis of a dismembered Union. The Southern states must not be reduced to provinces or territories, nor the Southern people regarded as alien enemies; but the constitutional relation of the states to the Union was to be recognized as being undisturbed and the constitutional rights of the Southern people should be fully maintained. To prosecute hostilities beyond these limits or in a spirit of

<sup>1</sup> Diven of New York, *Congressional Globe*, January 22, 1862.

conquest would destroy state equality, subvert the Constitution, and prevent the Union.<sup>1</sup>

(3) In the third place, a corollary to this view, the constitutional limits set to congressional and executive power must be the same in war as in peace. Secession, rebellion, and war had made no change as to the power that Congress could exercise within the states, be they the states of the Confederacy or the states of the Union. The President's powers were not increased. Therefore his executive orders, his proclamations, his military emancipation, his suspension of *habeas corpus*, his arbitrary arrests, must all be tested by the terms and canons of the Constitution as in times of peace. "The Union as it was; the Constitution as it is," was the maxim of the party.

In the view of these constitutionalists, the Union was to be saved only by, through, and under the Constitution—nothing more nor less. They idealized the Constitution. To them the Constitution was identical with the nation. Without it there could be no Union. The Constitution gone, the republic is dead. The war was for the preservation of the Constitution and for that alone; it was against the Constitution and because it was binding on all that the Southerners were rebels. These conservatives denounced the antislavery advocates as being indifferent as to whether or not their policies were in harmony with the Constitution, and this fact made the hated abolitionists—as they called all antislavery men—as guilty criminals as the secessionists themselves.

In the view of this party almost everything that the President or Congress proposed or did, for the effective and vigorous prosecution of the war, was unconstitutional. Confiscation of slave property was unconstitutional; retaining fugitive slaves within our lines was unconstitutional; the military emancipation of Fremont and Hunter was unconstitutional; the use of slaves as contraband was unconstitutional; Lincoln's plan of compensated emancipation was unconstitutional; enlistment of negro troops was unconstitutional; the Emancipation Proclamation was unconstitutional; the draft was unconstitutional; the suspension of the writ of *habeas corpus* was unconstitutional; military arrests were unconstitutional; suspending or in any way reconstituting state governments at the South was unconstitutional; Lincoln's appointment of military governors and his beginnings of reconstruction were unconstitutional. No exercise of power was constitutional except what was unmistakably granted by a strict construction of the Constitution interpreted as in times of peace. Instead of the war's having made all the difference in the

<sup>1</sup> Pendleton's resolutions, *Congressional Globe*, July 31, 1861.

world, it had made no difference at all. The Southern states and the Southern people were to have all the rights, privileges, immunities, and benefits of the Constitution. They were not bound by its provisions in the conduct of the war, but their opponents were to be restrained from every aggressive act of power not within its specific limits. This was a fearful handicap for the national government. Such a policy would have led to a passive and harmless war—almost purely defensive in its operations. Carried to its logical conclusion, no invasion of the Southern states nor subduing of the Southern people would have been possible under it, and it is very problematical whether the Constitution and the Union could have been saved for the South under its operation.

To this party and its constitutional view Thaddeus Stevens was diametrically opposed. He was its constant and stout antagonist. He derided these sticklers for the Constitution and in unsparing terms he denounced all their works and ways. They and he were at the antipodes of the political world, and they had but little bowels of mercy for one another. Stevens wished to establish a legal basis for the conduct of the war that would give the nation a chance to fight, and in the first discussion on slavery and the war to which I have referred (August 2, 1861) he laid down the legal and proper premises for that fight. He brushed theories aside, looked at the facts, and saw things as they were, and he sought a basis of action best calculated to bring the result desired. He took the bold ground that in the contest for its life the nation was not bound by the limitations of the Constitution. The war had abrogated the Constitution—not where it was respected and could be enforced by ordinary civil processes, but with respect to hostile confederated states that had rejected and repudiated the Constitution, trampled it under foot, and were resisting its restoration by organized armies. The people of the Confederate States were public belligerent enemies, and the nation in its effort to overcome them was bound only by the laws of war and the law of nations. The Constitution had no right to intervene if it stood in the way of the laws of war in dealing with the enemy.

Who says the Constitution must come in in bar of our action? It is the advocates of rebels, of rebels who have repudiated the Constitution, who have sought to overthrow it and trample it in the dust. Sir, these rebels who have disregarded and set at defiance that instrument are, by every rule of municipal and international law, estopped from pleading it against our action. Sir, it is an absurdity. There must be a party in court to plead it, and that party to be entitled to plead it in court, must first acknowledge its supremacy, or he has no business

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to be in court at all. . . . They can not be permitted to come in here and tell us that we must be loyal to the Constitution.<sup>1</sup>

When he was asked how members of Congress who had taken an oath to support the Constitution could violate it in their action, whether rebels complain of it or not, he replied that they do not violate it when they are operating against men who have no rights to the benefits of the Constitution. The law of nations was plain upon this point, the law established in the days of Cicero, "Inter arma silent leges." "This is a law that has been in force to the present time, and any nation that disregards the law is a poor pusillanimous nation which submits its neck to be struck off by the enemy."

Stevens admitted that the Constitution, while it was in force for the South, did not authorize Congress to interfere with slavery in the states. While the Constitution and laws were supreme no one would attempt it. But when the Constitution had been repudiated and set at defiance by armed rebellion the case was different.

There were not [he said] three thousand abolitionists, properly so called in the United States. Before this war the parties were bound together by a compact, by a treaty, called a Constitution. They admitted the validity of municipal laws binding on each. This war has cut asunder all these ligaments, abrogated all these obligations. Since these States have voluntarily thrown off that protection and placed themselves under the law of nations, it is not only our right but our duty to knock off every shackle from every limb.

He who wishes to re-establish the Union as it was cannot escape the guilt of attempting to enslave his fellow-men. The "Union as it was and the Constitution as it is", is an atrocious idea; it is man-stealing. The Southern States have forfeited all rights under the Constitution which they have renounced. They are forever estopped from claiming the Constitution as it was. The United States may give them those rights if it choose, but *they cannot claim them*. If a disgraceful peace were made leaving the cause of this rebellion and the cause of future wars untouched and living, its authors would be the objects of the deepest execration and of the blackest infamy. . . . All this clamor against radicals, all this cry of the "Union as it was", is but a persistent effort to re-establish slavery and to rivet anew forever the chains of bondage on the limbs of immortal beings. May the God of Justice thwart their designs and paralyze their wicked efforts.<sup>2</sup>

Stevens believed that in an emergency in order to "snatch the nation from the jaws of death" Congress was authorized to declare a dictator. It was a fearful power, and he hoped the necessity for it would never arise. But the safety of the people is the supreme

<sup>1</sup> *Congressional Globe*, August 2, 1861.

<sup>2</sup> *Ibid.*, January 22, 1864.

law, and rather than see the nation perish, rather than see it dishonored by compromise, concession, and submission, rather than see the Union dismembered, he was ready to apply the dictator's power.

It will be seen that Stevens's constitutional position, or extra-constitutional position, was consistent, straightforward, and outspoken. He blinked nothing, but always looked the constitutional issue squarely in the face. He made no pretenses and would resort to no forced construction to justify a course already predetermined. This is seen still more clearly in his attitude toward the admission of West Virginia.

The Constitution clearly provides that no state shall be divided except by its own consent. When Virginia seceded, the people in the western counties of the state, wishing to remain loyal to the Union, assumed to form a state government and choose state officers and a state legislature. They elected Senators and Representatives to Congress, who were admitted to their seats. They claimed to be the people of Virginia, constitutionally competent to give its consent to the formation of a new state within the borders of the Old Dominion. This people, having given its consent to the division of the old state of Virginia, immediately erected itself into the new state of West Virginia. Nobody consented except those within the limits of the new state. That is, the new state consented to the division of the old. And when the new state had been admitted according to prearrangement, Mr. Pierpont, pretending to be the governor of the state that pretended to be Virginia, was to move over to Alexandria and keep up the pretense of being the gubernatorial head of Old Virginia, with an official body that Sumner afterward called the "common council of Alexandria." As Stevens said after the war, "all the archives, property, and effects of the Pierpont Government were taken to Richmond in an ambulance." This was the government recognized during the war as the legitimate constitutional government of Virginia.

There were distinguished members of Congress who sought to find ground in the Constitution, or in the fictitious construction of that instrument, for this process by which Virginia was divided and West Virginia admitted. It was not the way of Thaddeus Stevens. To Stevens the proceedings, or the arguments based upon them, were all ridiculous and absurd. He was opposed to giving seats in the House to members from Virginia after the secession of that state, for "We know," as he said, "that members have been elected to this House by only twenty votes and those

cast under the guns of a fort. Now, to say that those gentlemen represent any district is a mere mockery."<sup>1</sup>

Stevens was willing to accomplish the end in view, the dismemberment of Virginia and the admission of the new state, the sufficient ground for the act being that it would weaken the enemy and help the national cause. But he recognized that the legal ground for the proceeding was, not the Constitution, but the laws of war. "We may admit West Virginia," he said, "not by any provisions of the Constitution but under our absolute power which the laws of war give us. I shall vote for this bill upon that theory and that alone; for I will not stultify myself by supposing that we have any warrant in the Constitution for this proceeding."

He regarded it as mockery to claim that the legislature of Virginia had ever consented to the division of that state. The majority of the people of Virginia, organized as a political community, was the state of Virginia. That state had changed its constitution and its relation to the federal government from that of one of its members to that of secession. The act was treason, but so far as the state corporation was concerned it was a valid act and governed the state. "A small number of the citizens of Virginia—the people in West Virginia—assembled together, disapproved of the acts of Virginia and with the utmost self-complacence called themselves Virginia. Is it not ridiculous?"

That seems more straightforward than to stretch the Constitution by a forced and fictitious construction while claiming to respect its provisions. To a layman it seems like better law, sounder sense, and more correct political science, if the United States was to be regarded as a nation and not a mere congeries of states.

This view of the character of the state and the effect of secession he maintained consistently on all occasions. He looked upon the Southern states as public enemies. We were at war with an acknowledged belligerent, with a foreign nation, and since such a war had annulled all former compacts existing between them neither could claim as against the other the aid of the Constitution. Stevens held that the Southern states, having committed treason, renounced their allegiance to the Union, discarded its Constitution and laws, organized a distinct and hostile government, and by force of arms having risen from the condition of insurgents to the position of an independent power *de facto*, and having been acknowledged as a belligerent both by foreign nations and by our own government, the Constitution and laws of the Union were set aside as far as they were concerned, and that as between the two belligerents they were under

<sup>1</sup> *Congressional Globe*, December 2, 1861.

the laws of war and nations alone. If the rebel states were still in the Union and under the Constitution, as some contended, he saw no reason why they should not elect the next President of the United States. If the rebels declined to vote, then one hundred loyal men who, as his legal opponents contended, still continued to be "the state," might meet and choose electors. The few loyal men around Fortress Monroe or Norfolk, or Alexandria, and a few cleansed patches in Louisiana, being one thousandth part of the state, might choose electors for the whole state. It was such reasoning that seemed like a mockery of constitutional law and political science to Stevens.

As to the minority who were loyal to the Union within a seceded state, he would regard them as citizens of that state and subject to its conditions. They must migrate or bear the burdens and penalties of their domicile, although in dealing with persons he would distinguish between the innocent and the guilty. The states were at war with the nation. The idea that a few loyal citizens are the state and may override and govern the disloyal millions, he was unable to comprehend. "If ten men fit to save Sodom can elect a governor and other state officers against more than a million Sodomites in Virginia, then the democratic doctrine that the majority shall rule is discarded and ignored."

The position of Stevens was vigorously assailed by Mr. Francis P. Blair, of Missouri, in a notable speech in the House, February 5, 1864. Blair held that Stevens's policy of confiscation could only be effected by the extermination of our whole kindred race in the South. The world would expect them to shed the last drop of blood rather than to submit to such spoliation, with no alternative but to die as paupers. Europe would be justified in intervening to put down such an innovation on the code of humanity and to arrest barbarities in defiance of the law of nations. It was frenzied altruism tending to promote "amalgamation of repugnant races in the name and by the charm of equality."

Blair held that the Southern states were indestructible; that their status was like that of Missouri, whose state organization had remained loyal to the Union. All that was needed was to drive out the rebel power that was holding the state government in duress. Our army and navy were crushing the life out of the usurpation, vetoing what Blair called the "assumption of Stevens that the state governments in the rebel states are as perfect now as before the rebellion, and being subsisting states, capable of corporate action, they have as states changed their allegiance from the United States to the Confederate States." In this undeniable fact, as Stevens had

stated it, Blair maintained that the secession doctrine was "absolutely recognized, with more distinctness than Calhoun ventured to urge it."

Here the majority of disloyalists in a State [said Blair] have the right admitted to over-ride a minority of loyal men and make them forswear their allegiance to the Union. No man, North or South, ever asserted the secession cause so boldly in the forum as the gentleman from Pennsylvania. He finds the rebel government upon the will of a majority of the people; proclaims that the minority, though loyal to the General Government (which has a right to the allegiance of all) must abandon the states or subscribe to their authority; insists that the usurpation has established independent states endowed with all the immunities and rights of an independent nation carrying on a legitimate war. This is the secession, abolition, absolute-conquest doctrine which the gentleman has broached in defiance of national and State Constitutions, the law of the civilized world and of all humanity.<sup>1</sup>

On May 2, 1864, during the discussion in the House on the Wade-Davis plan of reconstruction, Stevens had occasion to refer to these criticisms. He restated his position that the South was only a belligerent, with such rights only as the laws of war might accord. The fact of their being rebels as well as belligerents put them in a worse predicament and only extended our rights and justified the *summum jus* of martial law. In urging again a general scheme of confiscation he said the country should decide whether this was an unjust war, and whether the enemy was obstinate and ought to bear the burden of the war.

Stevens pictured in vigorous language the suffering and destruction of the war, which he denounced as unjust and as deserving of punishment. "If we are not justified", he said, "in exacting the extreme demands of war then I can hardly conceive a case where it would be applicable. To allow them to return with their estates untouched, on the theory that they have never gone out of the Union, seems to me rank injustice to loyal men."

Stevens replied with special vigor to Blair, "whose speech", he said, "contained the distilled virus of the copperhead." He recognized that selling estates in perpetuity as the result of attainder for treason was forbidden by the Constitution: conviction for treason could work no such consequence. What he contended for was the forfeiture of the property of rebels as enemies. Blair had said that Stevens had "treated with scorn the idea that States held in duress by the rebel power have a right to look to our laws and Constitution for protection." Stevens replied:

This is a false statement of my position. If the armies of the Confederate States should overrun a loyal state and hold it in duress,

<sup>1</sup> *Congressional Globe*, February 5, 1864.

that state would have a right to appeal to the Constitution for protection. But a state which by a free majority of its voters has thrown off its allegiance to the Constitution and holds itself in duress by its own armies, is estopped from claiming any protection under the Constitution. To say that such a state is within the pale of the Union so as to claim protection under its Constitution and laws is but the raving of a madman.

To escape the consequence of my argument he [Blair] denies that the Confederate States have been acknowledged as a belligerent or have established and maintained independent governments *de facto*. Such assurance would deny that there was a sun in the heavens. They have a Congress in which eleven states are represented; they have at least 300,000 soldiers in the field; their pickets are almost within sight of Washington. They have ships of war on the ocean destroying hundreds of our ships, and our government and the governments of Europe acknowledge and treat them as privateers, not as pirates. There is no reasoning against such impudent denials.

Stevens denied that he was countenancing secession in recognizing the palpable facts of war. The law forbids robbery and murder, but these crimes exist *de facto*. Does the man who declares their existence give countenance to them? If the fiction of equity courts that whatever ought to be shall be considered as existing—if this is true, then the rebel states are in the Union.

If the naked facts, palpable to every eye, attested by many bloody battle-fields, and recorded by every day's hostile legislation both in Washington and Richmond are to prevail, then the rebellious states are no more in the Union *in fact*, than the loyal states are in the Confederate States. Nor should they ever be treated so until they repent and are rebaptized into the National Union.

Stevens congratulated the country that the House had recently passed a resolution (1864) recognizing the Confederate States as a public enemy. That was the doctrine for which he had been contending. The consequences which he had sought to establish would follow as a corollary. "I have lived", he said, "to see the triumph of principles which, although I had full faith in their ultimate success, I did not expect to witness. If Providence will spare me a little longer, until this government shall be so reconstructed that the foot of a slave can never again tread upon the soil of the Republic, I shall be content to accept any lot which may await me."<sup>1</sup>

These extracts will serve to make clear Stevens's attitude toward the chief issues of the Civil War. Those whom he opposed will not be easily reconciled to honor his memory. As Sumner said, "No one gave to language a sharper bite." His words were words of sarcasm, satire, denunciation. They aroused resentment and often left a bitter sting. His antagonists dreaded him, and he has been

<sup>1</sup> *Congressional Globe*, vol. 65, pp. 2042-2043, May 2, 1864.

spoken of as a man of hate and vindictive vengeance. But there is testimony to show, from party friend and foe alike, that he was a man of deep and tender humanitarian feelings. He desired fair play and a square deal for all mankind. The punitive measures which he favored did not spring from personal feelings. It was the cause that he hated or loved. He loved justice; he entertained a deep hatred of slavery and secession, and he believed that a just punishment, as well as mercy, should be visited upon those whom he considered as the guilty authors of his country's woes. In this he was but human, a natural man begotten of passionate times, and he probably represented to a large degree the feelings of a majority of his fellow-countrymen. He deplored the compromising errors of the fathers, and his great purpose was to write the law of justice and human equality into the Constitution of his country; and he would feign no fraternal, sentimental regard for those who, as he thought, sought to violate, obstruct, or pervert these great principles of government.

JAMES ALBERT WOODBURN.









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